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107TH CONGRESS
2D SESSION

H. R. 3940

To eliminate the Federal quota and price support programs for tobacco, to compensate quota holders and active producers for the loss of tobacco quota asset value, to establish a permanent advisory board to determine and describe the physical characteristics of United States farm-produced tobacco and unmanufactured imported tobacco, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2002

Mr. MCINTYRE (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To eliminate the Federal quota and price support programs for tobacco, to compensate quota holders and active producers for the loss of tobacco quota asset value, to establish a permanent advisory board to determine and describe the physical characteristics of United States farm-produced tobacco and unmanufactured imported tobacco, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tobacco Livelihood and Economic Assistance for our Farmers Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

TITLE I—TERMINATION OF CURRENT TOBACCO PROGRAMS

SEC. 101. TERMINATION OF MARKETING QUOTA PROGRAMS AND REPEAL OF RELATED PROVISIONS.

(a) TOBACCO CONTROL ACT.—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515–515k), is repealed.

(b) COMMODITY HANDLING ORDERS.—Section 8c(2) of the Agricultural Adjustment Act (7 U.S.C. 608c(2)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking ''tobacco,''.

(c) PROCESSING TAX.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''

(2) in paragraph (6)(B)(i), by striking ", or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,".

(d) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking "tobacco,".

(f) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking "tobacco,";

(3) in paragraph (7), by striking the following: "Tobacco (flue-cured), July 1–June 30;

Tobacco (other than flue-cured), October 1–September 30);"

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking "and tobacco";

(6) in paragraph (12), by striking ''tobacco,'';

(7) in paragraph (14)—

(A) by striking ''(A)'' in subparagraph (A); and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(10) by striking paragraph (17); and

(11) by redesignating paragraph (16) as paragraph (15).

(g) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco'' and inserting ''or rice''.

(h) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(i) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(j) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a) by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) in the first sentence of subsection (b), by striking ''peanuts or tobacco'' and inserting ''or peanuts''.

(k) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking ''peanuts, or tobacco'' each place it appears in subsections (a) and (b) and inserting ''or peanuts''; and

(2) in subsection (a)—

(A) in the first sentence by striking ''all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,''; and

(B) in the last sentence by striking ''$500'' and all that follows through the period at the end of the sentence and inserting ''$500.''.

(l) REGULATIONS.—Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is

amended by striking ''peanuts, or tobacco'' and inserting ''or peanuts''.

(m) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c) by striking ''cotton, tobacco, and peanuts'' and inserting ''cotton and peanuts''; and

(2) by striking subsections (d), (e), and (f).

(n) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6) by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(o) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(p) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(q) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(r) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(s) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

(t) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law in effect before the amendments take effect as provided under subsection (u).

(u) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to the 2003 and subsequent tobacco crops.

SEC. 102. TERMINATION OF TOBACCO PRICE SUPPORT LOAN AND NO NET COST PROVISIONS AND REPEAL OF RELATED PROVISIONS.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn'' and inserting ''corn'';

(2) by striking subsection (c);

(3) in subsection (d)(3)—

(A) by striking ‘‘, except tobacco,’’; and

(B) by striking ‘‘and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;’’; and

(4) by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, 106B, and 106C of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2, 1445–3) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ‘‘tobacco,’’.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ‘‘(other than tobacco)’’ after ‘‘agricultural commodities’’ each place it appears.

(f) TRANSITION PROVISIONS.—

(1) PRICE SUPPORT LOAN OBLIGATIONS.—The amendments made by this section shall not affect any person's obligations that arise under or with respect to the price support loan program or loans issued through such program under any provision of law in effect before the amendments take effect as provided under subsection (g).

(2) TOBACCO STOCKS AND LOANS.—The Secretary of Agriculture shall issue regulations that require—

(A) the orderly disposition of quota tobacco held by any producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of quota tobacco;

(B) the repayment of all tobacco price support loans or surrender of collateral by such associations not later than one year after this section becomes effective.

(3) SPECIAL RULES FOR TERMINATION OF NO NET COST FUNDS AND ACCOUNTS.—Notwithstanding any other provision of law, upon the repeal by subsection (b) of the authorities in section 106A and 106B of the Agricultural Act of 1949 for the estab-

lishment of tobacco no net cost funds and accounts, respectively—

(A) any obligation of a tobacco producer, purchaser, or importer to make payments into any such fund or account also shall terminate; and

(B) any monies in any such fund or account shall be disposed of in the manner prescribed by the Secretary of Agriculture, except that—

(i) to the extent needed, such monies shall be applied or used for the purposes therefor prescribed by such sections; and

(ii) if any monies remain, the Secretary shall transfer such monies to the Secretary of Health and Human Services for use in accordance with section 402.

(g) APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall apply with respect to the 2003 and subsequent tobacco crops.

SEC. 103. GEOGRAPHICAL RESTRICTIONS ON EXPANSION OF TOBACCO PRODUCTION.

(a) PURPOSE.—The purpose of this section is to provide an orderly economic transition away from the marketing of tobacco based on quotas and price support while

also addressing the economic dislocation, and the resulting impact on interstate commerce, that the termination of the current tobacco program might cause in certain communities.

(b) PENALTY APPLICABLE TO TOBACCO GROWN IN NONQUOTA COUNTIES AND STATES.—The marketing of tobacco in the 2003 or subsequent marketing years, of a kind of tobacco that was subject to a marketing quota in the 2002 marketing year, shall be subject to a penalty equal to 100 percent of the total amount received on the marketing of the tobacco unless the tobacco was grown in any county in which such kind of tobacco was grown pursuant to a marketing quota in the 2002 marketing year.

(c) DEFINITIONS.—In this section:

(1) The term ''marketing year'' means July 1 to June 30 for flue-cured tobacco and October 1 to September 30 for all other kinds of tobacco.

(2) The term ''marketing quota in the 2002 marketing year'' means a quota established for that year pursuant to part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) and related provisions, as in effect for that marketing year.

SEC. 104. CONTINUED AVAILABILITY OF FEDERAL CROP INSURANCE.

Nothing in this title shall be construed to affect the eligibility of tobacco producers to obtain crop insurance for their crops pursuant to the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) under the terms of such Act.

TITLE II—PAYMENTS TO TOBACCO QUOTA HOLDERS AND PRODUCERS

SEC. 201. DEFINITIONS.

In this title:

(1) The term ''active producer of quota tobacco'' means a person that was the actual producer, as determined by the Secretary, of tobacco marketed under a marketing quota for the 2001 tobacco marketing year.

(2) The term ''quota tobacco'' means a kind of tobacco that is subject to farm marketing quotas or farm acreage allotments for the 1999, 2000, 2001, and 2002 tobacco marketing years under a marketing quota or allotment program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) The term ''Secretary'' means the Secretary of Agriculture.

(4) The term ''tobacco quota holder'' means an owner of a farm on January 1, 2002, for which a tobacco farm marketing quota or farm acreage allotment for quota tobacco was established with respect to the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938.

SEC. 202. PAYMENTS TO TOBACCO QUOTA HOLDERS.

(a) PAYMENT REQUIRED.—The Secretary shall make payments to each eligible tobacco quota holder for the termination of tobacco marketing quotas and related price support under title I, which shall constitute full and fair compensation for any losses relating to such termination.

(b) ELIGIBILITY.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each eligible tobacco quota holder, as determined under subsection (b).

(2) POUNDAGE QUOTAS.—For each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic tobacco marketing quota under the Agriculture Adjustment Act of 1938 for the 1998 marketing year for quota tobacco on the farm owned by the tobacco quota holder.

(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the amount equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the 1998 marketing year established by the Secretary for quota tobacco on the farm owned by the tobacco quota holder; by

(B) the average county production yield per acre for the county in which the farm is located for the kind of tobacco for the 1998 marketing year.

(d) PAYMENT.—The Secretary shall make payments to each eligible tobacco quota holder, as determined under subsection (b), in a total amount equal to the product obtained by multiplying—

(1) $8 per pound; by

(2) the base quota level established for the quota holder under subsection (c).

(e) TIME FOR PAYMENT.—The payments to eligible tobacco quota holders required under this section shall be made in five equal installments during fiscal years 2003, 2004, 2005, 2006, and 2007.

(f) RESOLUTION OF DISPUTES.—Any dispute regarding the eligibility of a person to receive a payment under this section, or the amount of the payment, shall be resolved by the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farm owned by the person is located.

(g) COMMODITY CREDIT CORPORATION.—The Secretary shall use the funds, facilities and authorities of the Commodity Credit Corporation to carry out this section.

SEC. 203. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS OF QUOTA TOBACCO.

(a) TRANSITION PAYMENTS REQUIRED.—The Secretary shall make transition payments under this section to eligible active producers of quota tobacco.

(b) ELIGIBILITY.—To be eligible to receive a transition payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of active producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) PRODUCTION BASE.—The Secretary shall establish a production base applicable to each eligible active producer of quota tobacco, as determined under subsection (b). A producer's production base shall be equal to the quantity, in pounds, of quota tobacco subject to the basic marketing quota produced and marketed by the producer under the Agriculture Adjustment Act of 1938 for the 2001 marketing year.

(d) PAYMENT.—The Secretary shall make payments to each eligible active producer of quota tobacco, as determined under subsection (b), in a total amount equal to the product obtained by multiplying—

(1) $4 per pound; by

(2) the production base established for the active producer under subsection (c).

(e) TIME FOR PAYMENT.—The payments to eligible active producers of quota tobacco required under this section shall be made in five equal installments during fiscal years 2003, 2004, 2005, 2006, and 2007.

(f) RESOLUTION OF DISPUTES.—Any dispute regarding the eligibility of a person to receive a payment under this section, or the amount of the payment, shall be resolved by the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

(g) COMMODITY CREDIT CORPORATION.—The Secretary shall use the funds, facilities and authorities of the Commodity Credit Corporation to carry out this section.

TITLE III—TOBACCO QUALITY BOARD

SEC. 301. ESTABLISHMENT OF BOARD.

The Secretary of Agriculture (in this title referred to as the ''Secretary'') shall establish a permanent advisory board within the Department of Agriculture to be known as the Tobacco Quality Board (in this title referred to as the ''Board'').

SEC. 302. MEMBERSHIP.

(a) NOMINATION AND APPOINTMENT.—The Board shall consist of 11 members, of which five shall be appointed by the Secretary from nominations submitted by representatives of United States tobacco producers, five shall be appointed by the Secretary from nominations submitted by representatives of United States tobacco product manufacturers, and one shall be an officer or employee of the Department of Agriculture appointed by the Secretary (who shall serve as Chair of the Board).

(b) TERMS.—

(1) CHAIR.—The Chair of the Board shall serve at the pleasure of the Secretary.

(2) OTHER MEMBERS.—Other members of the Board shall serve for two-year terms, except that, for the first appointments to the Board, two producer representatives and two manufacturer representatives shall have initial terms of one year.

SEC. 303. DUTIES.

The Board shall be responsible for—

(1) determining and describing the physical characteristics of United States farm-produced tobacco and unmanufactured imported tobacco;

(2) assembling and evaluating, in a systematic manner, concerns and problems with the quality of United States tobacco, expressed by domestic and

foreign buyers and manufacturers of tobacco products;

(3) reviewing data collected by Federal agencies on the physical and chemical integrity of United States produced and imported unmanufactured tobacco, to ensure that tobacco being used in domestically-manufactured tobacco products is of the highest quality and is free from prohibited physical and chemical agents;

(4) investigating and communicating to the Secretary—

(A) conditions with respect to the production of tobacco that discourage improvements in the quality of United States produced tobacco; and

(B) recommendations for regulatory changes that would address tobacco quality issues; and

(5) such other related activities assigned to it by the Secretary.

SEC. 304. ADMINISTRATIVE PROVISIONS.

(a) STAFF.—The Secretary shall provide the Board with staff experienced in the sampling and analysis of unmanufactured tobacco and capable of collecting data and monitoring tobacco production information, and such

other resources necessary for the Board to perform its duties under this subtitle, as determined by the Secretary.

(b) COMMODITY CREDIT CORPORATION.—The Secretary shall use the funds, facilities and authorities of the Commodity Credit Corporation to carry out this title.

TITLE IV—TOBACCO PRODUCT MANUFACTURER AND IMPORTER USER FEES

SEC. 401. USER FEE.

(a) IN GENERAL.—The Secretary of Health and Human Services shall assess an annual user fee, calculated in accordance with this section, upon each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States. The assessments shall commence during calendar year 2003, based on domestic sales of tobacco products during fiscal year 2003.

(b) BASE AMOUNT OF USER FEE FOR EACH CLASS OF TOBACCO PRODUCT.—

(1) The base amount of the user fee for cigarette manufacturers and importers shall be $2,116,252,000.

(2) The base amount of the user fee for small cigar manufacturers and importers shall be $1,051,000.

(3) The base amount of the user fee for large cigar manufacturers and importers shall be $164,274,000.

(4) The base amount of the user fee for snuff manufacturers and importers shall be $9,920,000.

(5) The base amount of the user fee for chewing tobacco manufacturers and importers shall be $2,275,000.

(6) The base amount of the user fee for pipe tobacco manufacturers and importers shall be $1,505,000.

(7) The base amount of the user fee for roll-your-own tobacco manufacturers and importers shall be $3,231,000.

(c) DETERMINATION OF ANNUAL USER FEE FOR EACH CLASS OF TOBACCO PRODUCT.—The total user fee to be assessed upon, and paid by, the manufacturers and importers of each class of tobacco product in each calendar year, as allocated pursuant to subsection (d), shall be the base amount for that class of tobacco product provided in subsection (b) multiplied by a fraction—

(1) the numerator of which is the total volume of domestic sales of that class of tobacco product in the fiscal year ending on September 30 of that calendar year; and

(2) the denominator of which is the total volume of domestic sales of that class of tobacco product in fiscal year 2003.

(d) ALLOCATION OF TOTAL USER FEE AMOUNTS BY MARKET SHARE—

(1) FORMULA.—The user fee for each class of tobacco product to be paid by each manufacturer or importer of that class of tobacco product under subsection (a) shall be determined in each year by multiplying—

(A) such manufacturer's or importer's market share, as calculated with respect to the current calendar year, of that class of tobacco product; by

(B) the total user fee amount for the current calendar year, as determined under subsection (c), for that class of tobacco product.

(2) MARKET SHARE DEFINED.—In this subsection, the term ''market share'' for each manufacturer or importer of a class of tobacco product for the purpose of the assessment to be calculated in the current calendar year shall be equal to that manufacturer's or importer's respective share (expressed as a decimal to the fourth place) of the total volume of domestic sales of that class of tobacco product

during the calendar year immediately preceding the year of such assessment.

(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.— The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary of Health and Human Services based on certified reports submitted by such manufacturers and importers pursuant to subsection (f). For purposes of the Secretary's calculations under this subsection and the certifications under subsection (f), the volumes of domestic sales shall be measured, with respect to cigarettes, in terms of the numbers of cigarettes sold, or with respect to other classes of tobacco products, in terms of such units as shall be specified by regulation by the Secretary.

(f) CERTIFICATION OF VOLUME OF DOMESTIC SALES.— Every manufacturer and importer of tobacco products shall submit each year a certified report to the Secretary of Health and Human Services setting forth for each class of tobacco products the total, for the prior year, of such manufacturer's or importer's domestic sales to wholesalers and retailers and directly to consumers. These certified reports must be submitted to the Secretary not

later than March 1 of the year after the year for which the certified report is being made.

SEC. 402. ALLOCATION OF USER FEES.

(a) IN GENERAL.—The user fees collected pursuant to section 401 and any funds transferred to the Secretary of Health and Human Services by the Secretary of Agriculture pursuant to section 102(f)(3)(B) shall be available, without further appropriation, in accordance with, and for the purposes described, by this section. All such funds shall remain available until expended.

(b) FUNDING FOR FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary of Health and Human Services shall make 15 percent of the user fee amounts collected pursuant to section 401 each year available to the Food and Drug Administration for the regulation of tobacco products under chapter IX of the Federal Food, Drug, and Cosmetic Act.

(c) FUNDING FOR OTHER TOBACCO-RELATED PROGRAMS.—The Secretary of Health and Human Services shall use the remaining 85 percent of the user fee amounts collected each year pursuant to section 401 and any amounts transferred to the Secretary by the Secretary of Agriculture pursuant to section 102(f)(3)(B)—

(1) to reimburse the Commodity Credit Corporation for the expenditures made by that agency under title II of this Act; and

(2) to use the balance of such amounts, if any such balance remains for any year after the reimbursement under paragraph (1), to fund any other program that relates to tobacco products.

TITLE V—FDA REGULATION OF TOBACCO PRODUCTS

SEC. 501. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is addictive.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and dis-

tributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy and the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products.

(13) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(14) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(15) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(16) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(17) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(18) Children are more influenced by tobacco advertising than adults and they smoke the most advertised brands.

(19) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(20) Advertising restrictions will have a positive effect on the smoking rates of young people.

(21) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people.

(22) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

SEC. 502. DEFINITIONS.

(a) FEDERAL CIGARETTE LABELING AND ADVERTISING ACT.—Section 3(1) of the Federal Cigarette Labeling and Advertising Act is amended—

(1) in subparagraph (A) by striking ''and'';

(2) in subparagraph (B) by striking the period and inserting ''; and''; and

(3) by inserting the following new subparagraph at the end thereof:

''(C) any tobacco product, in any form, including bidis and kreteks, if the tobacco in the product is heated or burned and is functional in the product, and the product, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.''.

(b) THIS TITLE.—In this title:

(1) BRAND.—The term ''brand'' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term ''cigarette'' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)).

(3) CIGARETTE TOBACCO.—The term ''cigarette tobacco'' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term ''commerce'' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) CONSTITUENT.—The term ''constituent'' in relation to cigarettes means any element of mainstream or sidestream smoke.

(6) DISTRIBUTOR.—The term ''distributor'' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless to-

bacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this title.

(7) INGREDIENT.—The term ''ingredient'' in relation to cigarettes or smokeless tobacco products means any substance, chemical, or compound (other than tobacco, water, or reconstituted tobacco sheet made wholly from tobacco) added, or specified for addition, by the manufacturer to the tobacco, paper, or filter of a cigarette, or to the tobacco of a smokeless tobacco product, including flavorants, processing aids, casing sauces, preservatives, and combustion modifiers.

(8) MANUFACTURER.—The term ''manufacturer'' means any person who manufactures tobacco products intended to be sold in the United States. The term ''manufacturer'' shall include an importer or other first purchaser for resale in the United States of tobacco products manufactured outside of the United States or tobacco products manufactured in the United States but not intended for sale in the United States.

(9) NICOTINE.—The term ''nicotine'' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(10) PACKAGE.—The term ''package'' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) RETAILER.—The term ''retailer'' means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(12) SECRETARY.—Except where the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

(13) SMOKELESS TOBACCO.—The term ''smokeless tobacco'' means any product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

SEC. 503. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(ll) The definitions contained in section 502 of the Tobacco Livelihood and Economic Assistance for our Farmers Act of 2002 shall apply with respect to chapter IX.''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after chapter VIII the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3), unless the product is a reduced risk product pursuant to section 912.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) Nothing in this chapter shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter of this Act.

''(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product more injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered more injurious to health;

''(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents more injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless

its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold, distributed, advertised, or promoted in violation of section 915 or regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufac-

turer, packer, or distributor with respect to that tobacco product—

"(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

"(B) a brief statement of—

"(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

"(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

"(9) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements the information required by section 916(c);

''(10) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

''(11) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required by or under section 909.

''(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of this chapter shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

"SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

"(a) REQUIREMENT.—Not later than 6 months after the date of enactment of this chapter, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

"(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

"(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

"(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

"(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or pos-

sessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

"SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—As used in this section—

''(1) consistent with the provisions of section 901(c)(2), the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

''(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each cor-

porate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uni-

form system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establish-

ment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

"(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

"(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

"(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

"(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the

Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

"(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

"(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

"(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manu-

facture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of the date of enactment of this chapter, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the

Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

''(1) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of the date of this chapter's enactment, that is in compliance with the requirements of this Act; and

''(2) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need thereof) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 905, 907, 908, 909, 910, 912, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of

that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) The Secretary may by regulation require that a tobacco product be restricted to sale or distribution upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if the Secretary determines that such regulation would be appropriate for the prevention of, or decrease in, the use of tobacco products by children under the age at which tobacco products may be legally purchased. No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice for an agricultural product, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter.

''(B) The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit

recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or tem-

porary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Sec-

retary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

"(i) the date the petition was submitted to the Secretary under subparagraph (A); or

"(ii) the day after the petition was referred to an advisory committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

"(C) The Secretary may approve—

"(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

"(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to

assure that the tobacco product will be in compliance with this chapter.

''(D) An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation.

''(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and

(b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. PERFORMANCE STANDARDS.

"(a) IN GENERAL.—

"(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

"(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

"(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

"(i) for the reduction of nicotine yields of the product;

"(ii) for the reduction or elimination of other harmful constituents or harmful components of the product; or

"(iii) relating to any other requirement under (B);

"(B) shall, where necessary to be appropriate for the protection of the public health, include—

"(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

"(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

"(iii) provisions for the measurement of the performance characteristics of the tobacco product; and

"(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions

of the standard for which the test or tests were required; and

''(C) shall not render the tobacco product unacceptable for adult consumption.

''(3) PERIODIC REEVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops,

or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the Secretary's judgment can make a significant contribution.

"(b) ESTABLISHMENT OF STANDARDS.—

"(1) NOTICE.—

"(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

"(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

"(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

"(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

"(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or

proposed performance standard, for consideration by the Secretary.

''(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(E) The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

"(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

"(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

"(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

"(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption

or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of any decision to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself the power to make such a decision.

''(4) AMENDMENT; REVOCATION.—

''(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

''(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if

the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other

data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents a risk of substantial harm to the public health exceeding the risks posed by tobacco products marketed before the date of enactment of this chapter; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who

should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and

on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

"(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

"(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

"(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

"(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or other-

wise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason

or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or

importer if the removal or correction was undertaken—

"(A) to reduce a risk to health posed by the tobacco product; or

"(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

"(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

"SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

"(a) IN GENERAL.—

"(1) PREMARKET APPROVAL REQUIRED.—Approval under this section of an application for premarket approval for any tobacco product, other than a reduced risk product under section 912, that is not commercially marketed (other than for test mar-

keting) in the United States as of the date of this chapter's enactment, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has not suspended the distribution of such product under this paragraph. Within 90 days of the submission of a report under section 905(j), the Secretary may by order suspend the distribution of the tobacco product that is the subject of that report if the Secretary determines that there is a reasonable likelihood that the tobacco product is not substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of the date of this chapter's enactment, that is in compliance with the requirements of this Act. If the Secretary fails to issue an order within this 90-day period, then the tobacco product that is the subject of that report shall be deemed to be substantially equivalent to a predicate tobacco product. The issuance of an order under this paragraph shall constitute final agency action for purposes of section 702 of title 5, the United States Code; provided, that the Secretary may rescind or modify an order issued under this paragraph at any time.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

"(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

"(i) has the same characteristics as the predicate tobacco product; or

"(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product could not reasonably be expected to increase the health risks to consumers compared to a conventional tobacco product that is commercially marketed in the United States and that is in compliance with the requirements of this Act.

"(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

"(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

"(3) HEALTH INFORMATION.—

"(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

"(B) Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product. The communication that such product is a reduced risk product may comply with requirements prescribed by the Secretary relating to such communication,

and the Secretary may require prior approval of the communication, in each case in accordance with section 912.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents greater risk than other tobacco products;

''(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such to-

bacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with

all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to

the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would pose no greater risk to the public health than currently marketed tobacco products;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with

which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

''(4) BASIS FOR ACTION.—

''(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to

evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product poses greater risks to the public health than other available products;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

"(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

"(iii) has not complied with the requirements of section 905;

"(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

"(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reason-

able time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that

is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

"SEC. 911. JUDICIAL REVIEW.

''(a) IN GENERAL.—Not later than 30 days after—

''(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit where-

in such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such addi-

tional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any

regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 913, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

''SEC. 912. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the

product is demonstrated to significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

"(i)(I) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of another tobacco product in the same or different category as the proposed reduced risk product; or

"(II) contains scientific evidence showing that use of such product results in a substantially lower potential risk to health in one or more specific respects than use of another tobacco product in the same or different category as the proposed reduced risk product; and

"(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

"(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

"(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

"(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

"(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

"(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary, although in no event shall such requirements prohibit the communication that such product is a reduced risk product. The communication that such product is a reduced risk product may comply with requirements prescribed by the Secretary relating to such communication, and the Secretary may require prior approval of the communication.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an in-

formal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

''(e) POSTMARKET SURVEILLANCE.—

''(1) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for reduced risk a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of

the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(2) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a reduced risk tobacco product under paragraph (1) shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

''SEC. 913. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, labeling, good manufacturing standards, or reduced risk products.

''(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 914. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 915. ACCESS AND MARKETING RESTRICTIONS.

''(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

''(1) ADULT.—The term 'adult' means any person who is older than the minimum age at which it is legal to purchase or possess (whichever minimum age is older) tobacco products.

''(2) ADULT-ONLY FACILITY.—The term 'adult-only facility' means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under state law, or by checking the identification of any person appearing to be under the age of 27) that only

adults are present. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that only adults are present during the event or time period in question.

''(3) BRAND NAME.—The term 'brand name' means a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any domestic brand of tobacco products. The term 'brand name' shall not include the corporate name of any tobacco product manufacturer that does not after the date of the enactment of this chapter sell a brand of tobacco products in the United States that includes such corporate name.

''(b) CIGARETTE AND SMOKELESS TOBACCO PRODUCT REQUIREMENTS.—

''(1) MINIMUM SALES AGE.—No retailer may sell a tobacco product to any person younger than 18 years of age.

''(2) PROOF OF AGE.—

"(A) Except as otherwise provided in subparagraph (B), each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age.

"(B) No such verification is required for any person over the age of 26.

"(3) ENFORCEMENT BY THE STATES.—The Secretary may enter into an agreement with any State which has in effect a State law that is at least as restrictive as this subsection, whereby such State agrees to enforce such State law in a manner reasonably designed to prevent its violation and the Secretary provides a grant to such State for the purpose of enforcing such State law. No action taken by the Secretary pursuant to this paragraph shall be construed to limit the authority of the Secretary under this subsection.

"(4) MAIL ORDER SALES.—After two years from the date of enactment of this chapter, the Secretary shall transmit to Congress a report describing the extent, if any, to which individuals younger than 18 years of age are obtaining tobacco products through the mail.

''(c) MINIMUM PACKAGE SIZE REQUIREMENTS.—

''(1) No manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

''(2) No retailer may break or otherwise open any tobacco product package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size provided in paragraph (1), or any quantity of another tobacco product that is smaller than the smallest package distributed by the manufacturer for individual consumer use.

''(d) BAN ON YOUTH ACCESS TO FREE SAMPLES.—

''(1) No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of tobacco products, except in an adult-only facility.

''(2) For purposes of this subsection, a 'free sample' does not include a tobacco product that is provided to an adult in connection with—

''(A) the purchase, exchange or redemption for proof of purchase of any tobacco products (including, but not limited to, a free offer in

connection with the purchase of tobacco products, such as a 'two-for-one' offer), or

"(B) the conducting of consumer testing or evaluation of tobacco products with persons who certify that they are adults.

"(e) VENDING MACHINES, SELF-SERVICE DISPLAYS, MAIL-ORDER SALES, AND OTHER 'IMPERSONAL' MODES OF SALE.—

"(1) Except as otherwise provided in paragraph (2), a retailer may sell a tobacco product only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

"(2) The following methods of sale are permitted under this subsection:

"(A) Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail.

"(B) Vending machines that are located in an adult-only facility.

"(3) For purposes of this section, a 'self-service' display means any display where the customer has access to the tobacco products without the aid of a sales clerk.

''(f) PROHIBITION ON YOUTH TARGETING.—No manufacturer, distributor, or retailer may take any action, directly or indirectly, to target youth in the advertising, promotion, or marketing of tobacco products, or take any action the primary purpose of which is to initiate, maintain, or increase the incidence of youth smoking. For purposes of this subsection, the term 'youth' means any person or persons under 18 years of age.

''(g) BAN ON USE OF CARTOONS.—

''(1) No manufacturer, distributor, or retailer may use or cause to be used any cartoon in the advertising, promoting, packaging, or labeling of tobacco products.

''(2) For purposes of this subsection, the term 'cartoon' means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

''(A) The use of comically exaggerated features;

''(B) The attribution of human characteristics to animals, plants, or other objects, or the similar use of anthropomorphic technique.

''(C) The attribution of unnatural or extrahuman abilities, such as imperviousness to

pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

''(3) The term 'cartoon' includes 'Joe Camel,' but does not include any drawing or other depiction that, on July 1, 1998, was in use in the United States in any manufacturer's corporate logo or in any manufacturer's tobacco product packaging.

''(h) ELIMINATION OF OUTDOOR ADVERTISING.—

''(1) No manufacturer, distributor, or retailer may place or cause to be placed any outdoor advertising advertising tobacco products.

''(2) For purposes of this subsection, the term 'outdoor advertising' means—

''(A) billboards;

''(B) signs and placards in arenas, stadiums, shopping malls, and video game arcades (whether any of the foregoing are open air or enclosed); and

''(C) any other advertisements placed—

''(i) outdoors, or

''(ii) on the inside surface of a window facing outward.

''(D) The term 'outdoor advertising' does not mean—

"(i) an advertisement on the outside of a tobacco product manufacturing facility;

"(ii) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single 'mosaic'-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed on the outside of any retail establishment that sells tobacco products (other than solely through a vending machine), on the outside (but on the property of) any such establishment, or on the inside surface of a window facing outward in any such establishment; or

"(iii) an advertisement inside a retail establishment that sells tobacco products (other than solely through a vending machine) that is not placed on the inside surface of a window facing outward.

"(3) For purposes of this subsection, the term 'video game arcade' means an entertainment estab-

lishment primarily consisting of video games (other than video games intended primarily for use by persons 18 years of age or older) and/or pinball machines.

''(i) ELIMINATION OF TRANSIT ADVERTISEMENTS.—

''(1) No manufacturer, distributor, or retailer may place or cause to be placed any transit advertisements advertising tobacco products.

''(2) For purposes of this subsection, the term 'transit advertisements' means advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar location.

''(3) The term 'transit advertisements' does not include any advertisement placed in, on, or outside the premises of any retail establishment that sells tobacco products (other than solely through a vending machine), except if such individual advertisement—

''(A) occupies an area larger than 14 square feet;

''(B) is placed in such proximity to any other such advertisement so as to create a sin-

gle 'mosaic'-type advertisement larger than 14 square feet; or

"(C) functions solely as a segment of a larger advertising unit or series).

"(j) BAR ON ADVERTISING IN ANY YOUTH-ORIENTED PUBLICATION.—

"(1) No manufacturer, distributor, or retailer shall advertise a tobacco product in any youth-oriented publication (whether periodic or limited distribution).

"(2) For purposes of this subsection, a 'youth oriented publication' is a newspaper, magazine, periodical, or other publication—

"(A) whose readers younger than 18 years of age constitute more than 15 percent of the total readership as measured by competent and reliable survey evidence; or

"(B) that is read by 2,000,000 or more persons younger than 18 years of age as measured by competent and reliable survey evidence.

"(k) BAN ON TOBACCO PRODUCT BRAND NAME SPONSORSHIPS.—

"(1) No manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or

any entry or team in any event, in the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

''(2) Nothing in this subsection shall be construed to prevent a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered and in use in the United States prior to January 1, 2001, and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

''(3) This subsection shall not apply to any event sponsored in an adult-only facility.

''(l) BAN ON TOBACCO BRAND NAME MERCHANDISE.—

''(1) No manufacturer may market, distribute, offer, sell, license or cause to be marketed, distributed, offered, sold, or licensed (including, without limitation, by catalogue or direct mail), any apparel or other merchandise (other than tobacco products, items the sole function of which is to advertise tobacco products, or written or electronic publications) which bears a brand name.

''(2) Nothing in this subsection shall—

''(A) prohibit the distribution to any manufacturer's employee who is an adult of any item described above that is intended for the personal use of such an employee;

''(B) require any manufacturer to retrieve, collect or otherwise recover any item that prior to the enactment of this chapter was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold, or licensed by such manufacturer;

''(C) apply to coupons or other items used by adults solely in connection with the purchase of tobacco products; or

''(D) apply to apparel or other merchandise used within an adult-only facility that is not distributed (by sale or otherwise) to any member of the general public.

''(m) BAN ON GIFTS TO UNDERAGE PERSONS BASED ON PROOFS OF PURCHASE.—

''(1) No manufacturer, distributor, or retailer may provide or cause to be provided to any person, without sufficient proof that such person is an adult, any item in exchange for the purchase of tobacco products, or the furnishing of credits, proofs-of-purchase, or coupons with respect to such a purchase.

''(2)(A) For purposes of paragraph (1), a driver's license or other government-issued identification (or legible photocopy thereof), the validity of which is certified by the person to whom the item is provided, shall by itself be deemed to be a sufficient form of proof of age; and

''(B) In the case of items provided (or to be redeemed) at retail establishments, a manufacturer shall be entitled to rely on verification of proof of age by the retailer, where such retailer is required to obtain verification under applicable Federal, State or local law.

''(n) BAN ON NON-TOBACCO PRODUCT BRAND NAMES.—

''(1) Except as provided in paragraph (2), no manufacturer may, pursuant to any agreement requiring the payment of money or other valuable consideration, use or cause to be used as a brand name of any tobacco product any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group, or individual celebrity.

''(2) Paragraph (1) shall not apply to any tobacco product brand name in existence as of July 1, 1998.

''(3) For the purposes of this section, the term 'other valuable consideration' shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

''(o) LIMITATION ON THIRD PARTY USE OF TOBACCO BRAND NAMES.—

''(1) No manufacturer may license or otherwise expressly authorize any third party to use or advertise any brand name in a manner prohibited by this Act if done by such manufacturer itself.

''(2) Nothing in this subsection shall require any manufacturer to retrieve, collect, or otherwise recover any item that prior to the enactment of this chapter was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold, or licensed by such manufacturer.

''(p) BAR ON PRODUCT PLACEMENT IN CERTAIN MEDIA.—

''(1) Except as provided in paragraph (2), no manufacturer may make, or cause to be made, any payment or other consideration to any other person or entity to use, display, make reference to, or use as a prop any tobacco product, tobacco product package, advertisement for a tobacco product, or any other item bearing a brand name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ('media').

''(2) Paragraph (1) shall not apply to—

''(A) media where the audience or viewers are within an adult-only facility (provided such media are not visible to persons outside such adult-only facility);

''(B) media not intended for distribution or display to the public; or

''(C) instructional media concerning non-conventional tobacco products or tobacco products designated as reduced risk viewed only by or provided only to consumers who are adults.

''(q) SEVERABILITY.—If any provision of this section is held invalid, those subsections, and paragraphs which are not so held shall continue to be in effect.

''(r) EFFECTIVE DATES.—The provisions of this section shall take effect on the date that is six months after the date of enactment of this section, except for the provisions of subsections (e) and (k), which shall take effect on the date that is one year after the effective date of this section.

''SEC. 916. MANDATORY DISCLOSURES.

''(a) DISCLOSURE OF INGREDIENTS TO THE PUBLIC.—

''(1) Not later than 12 months after the effective date of this section, the Secretary shall promulgate regulations requiring the disclosure to the public on a brand-by-brand basis of the common or usual name of each ingredient of a tobacco product in descending order of predominance by weight, except that spices, flavorings, and colorings may at the

manufacturer's election be designated as spices, flavorings, and colorings without naming each. Any ingredient that has been disclosed to the public pursuant to any other law or regulation with respect to a particular brand may be required to be disclosed for such brand pursuant to this subsection.

''(2) The regulations required by this subsection shall provide that incidental additives that are present in a tobacco product at insignificant levels and that do not have any technical or functional effect in the finished tobacco product shall be exempt from disclosure.

''(3) The requirement of this subsection to disclose ingredients in descending order of predominance shall not apply to ingredients in amounts of 2 percent or less by weight when a listing of such ingredients is placed at the end of the ingredients statement following an appropriate quantifying statement, such as 'contains ____ percent or less of ____', or 'less than ____ percent of ____'.

''(4) Any disclosure required pursuant to this subsection may be required by appropriate means, except that, notwithstanding any other provision of this Act, the Secretary shall not require the listing

of any ingredient on any package or in any advertisement.

''(b) DISCLOSURE OF PERCENTAGE OF DOMESTIC AND FOREIGN TOBACCO.—Not later than 12 months after the effective date of this section, the Secretary shall promulgate regulations that require that each package of a tobacco product disclose, with respect to the tobacco contained in that brand—

''(1) the percentage of tobacco that is domestic tobacco; and

''(2) the percentage of tobacco that is foreign tobacco.

''(c) MANDATORY DISCLAIMER.—

''(1) Any tobacco product advertising which includes a term classifying a brand of tobacco product according to its 'tar' yield or the yield to consumers of any substance, including but not limited to terms such as 'light', or 'low tar', shall also include the following disclaimer: '[Brand] not shown to be less hazardous than other [type of tobacco product]'. This section shall not be deemed to apply to the use of the terms 'filtered' or 'filter'. In no event shall any such disclaimer be required on any tobacco product package.

''(2) In addition to the provisions of paragraph (1), not later than 12 months after the effective date of this section, the Secretary shall promulgate regulations relating to the use of such terms, to ensure that they are not false or misleading.

''(3) The Secretary may modify or waive any requirement under this subsection with respect to any product that has been designated by the Secretary as a reduced risk product under section 912.''.

SEC. 504. REGULATORY RECORD.

Notwithstanding the provisions of subchapter II of chapter 5 of title 5, United States Code, in promulgating regulations under this chapter, the record developed and utilized by the Secretary for the purposes of promulgating subparts (B) and (D) of the regulations relating to the sale, distribution, and use of tobacco products on or about August 28, 1996, as reflected in articles IV and VI of the preamble to the 1996 Food and Drug Administration Tobacco Rule (including public comments, Food and Drug Administration documents, and any other information generated or compiled for purposes of promulgating such regulations), shall be deemed to have the same legal status as if such record had been developed under a rulemaking proceeding conducted pursuant to section 906(d)(1). In all

other respects, including with respect to the issue of whether such regulations conform to section 906(d)(1), the procedural requirements of this chapter and the Administration Procedure Act will apply.

SEC. 505. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 903, 904, 905, 906, 907, 908, 909, 910, or 912'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(j)(2).'';

(10) in subsection (q), by striking paragraph (1) and inserting the following:

''(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

(4) by inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale

order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(5) in subparagraph (A) of paragraph (4), as so redesignated—

(A) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-to-bacco-sale order may be imposed,''; and

(B) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(6) in subparagraph (B) of paragraph (4), as so redesignated—

(A) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-to-bacco-sale order,''; and

(B) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.'';

(7) by adding at the end of paragraph (4), as so redesignated, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(8) in paragraph (5), as so redesignated—

(A) by striking ''(3)(A)'' and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears;

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(9) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2), by striking ''and'' before ''(D)'';

(2) in subsection (a)(2), by striking ''device.'' and inserting a comma and the following:

''(E) Any adulterated or misbranded tobacco product.'';

(3) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(5) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco products'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a), by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(2) in subsection (a), by inserting ''or subsection (j) of section 905'' after ''section 510'';

(3) in subsection (a), by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products''; and

(4) in subsection (e)(1), by inserting 'tobacco product' after 'device'.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with repeated violations at a particular retail outlet unless the Secretary has provided notice of previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been

the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 506. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive''

''WARNING: Tobacco smoke can harm your children''

''WARNING: Cigarettes cause fatal lung disease''

''WARNING: Cigarettes cause cancer''

''WARNING: Cigarettes cause strokes and heart disease''

''WARNING: Smoking during pregnancy can harm your baby''

''WARNING: Smoking can kill you''

''WARNING: Tobacco smoke causes fatal lung disease in non-smokers''

''WARNING: Quitting smoking now greatly reduces serious risks to your health''

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word ''WARNING'' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or

white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor,

or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ''WARNING'' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that

is the same color as the letters of the statements and that is the width of the first downstroke of the capital ''W'' of the word ''WARNING'' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements

shall appear in the same language as that principally used in the advertisement.

''(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(4) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the prod-

uct and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.''.

SEC. 507. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 506, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section subject to the limitation on proportional size of the warning contained in subsections (a)(2) and (b)(2), or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 508. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer''

''WARNING: This product can cause gum disease and tooth loss''

''WARNING: This product is not a safe alternative to cigarettes''

''WARNING: Smokeless tobacco is addictive''

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except

that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word ''WARNING'' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufac-

turer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 509. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 508, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, subject to the limitations on proportional size of the warning contained in paragraphs (2) and (3) of subsection (a), or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 510. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(a)), as amended by section 506, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclo-

sure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).''.

SEC. 511. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of Food and Drugs, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) shall require the testing, reporting, and disclosure of tobacco product smoke constituents and

ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

SEC. 512. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act

(15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

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